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MARK S. NOWOTARSKI 30 GLEN TERRACE STAMFORD, CT 06906			EXAMINER RINES, ROBERT D	
			ART UNIT 3623	PAPER NUMBER
			NOTIFICATION DATE 02/16/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/601,118

Applicant(s)

ROBERTSON ET AL.

Examiner

R. David Rines

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/29/10, 11/12/10.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-39, 44-46 and 48-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 37-39, 44-46 and 48-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

[1] This communication is in response to the BPAI decision of 29 September 2010 and the amendment filed 12 November 2010. It is noted that this application is a continuation-in-part (CIP) of United States Patent Application #09/452,126 filed 1 December 1999. Claims 1-36, 40-43, and 47 have been cancelled. Claim 37 has been amended. Claims 48-51 have been added. Claims 37-39, 44-46, and 48-51 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

[2] In accordance with the BPAI Decision mailed 29 September 2010, previous rejections of claims 37-39 and 44-46 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement are hereby withdrawn.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[3] In accordance with the BPAI Decision mailed 29 September 2010, previous rejection of claims 37-39 and 44-46 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention are hereby withdrawn

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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[4] Claims 37-39 and 44-47 and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haner (Charles F. Haner, *A Prediction of Automobile Claims by Psychological Methods*, The Journal of Risk and Insurance, vol. 35, no. 1 (Mar. 1968), pp. 49-59) in view of Lajunen (Timo Lajunen & Heikki Summala, *Drive Experience, Personality, and Skill and Safety-Motive Dimensions in Drivers' Self-Assessments*, Person Individ, Diff. Vol. 19, No.3 (1995), pp. 307-318) and DeTore et al. (United States Patent #4,975,840) have not been overcome by the amendments to the subject claims and are hereby maintained.

Claims 37-39 and 44-47 are rejected for the reasons provided in the Office Action mailed 28 April 2009 and the BPAI decision 29 September 2010 affirming the Examiner's rejection of the claims under 35 U.S.C. 103(a) in consideration of the applied teachings and the conclusions of obviousness provided in the noted Office Action of 28 April 2009.

In the BPAI decision mailed 29 September 2010, the BPAI found Appellant's arguments with respect to the applied teachings unpersuasive and Affirmed the Examiner's rejection of the claims under 35 U.S.C. 103(a). Further, the BPAI concluded that "...claim 37 generally requires target questions carried out on a particular computer modified to calculate multiple correlations and the levels of confidence thereof...". The BPAI further provided that "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415 (2007). In response to the BPAI's above noted conclusion of obviousness and statements of motivation as provided

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under the rationale derived from KSR, Examiner has modified the previous conclusion/motivational statement with the noted rationale provided by the BPAI.

As per the amendment filed 12 November 2010, Applicant has amended claim 37 and added claims 48-51. The newly added claims and the amendment to claim 37 are addressed below.

Claims 1-36 have been cancelled.

As per (currently amended) claim 37, Haner discloses a method for risk classification of a prospective insured, said prospective insured applying for automobile insurance, said prospective insured belonging to a demographic group (Haner; page 49, Abstract, paragraphs 1-3 and 7), said method comprising: a. providing to said prospective insured a set of four or more target questions (Haner; page 50, paragraph 4); b. obtaining a set of responses to said set questions from said prospective insured (Haner; page 50, paragraphs 4-5); c. classifying said prospective insured into a risk class based at least in part on said set of responses (Haner; page 49, paragraph 3, page 50, paragraphs 5-7, and page 51, table 1).

Haner further discloses assembly of survey information including f. collecting information from said sample population, said information comprising; i. response to said survey (Haner; page 50, paragraphs 4-8); ii. the number of automobile insurance claims reported by each of said persons in said sample population (Haner; page 51, paragraph 1-3 and Table 1); and iii. conventional

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classification information for automobile insurance underwriting, said conventional classification information comprising; 1. age ; 2. marital status (Haner; Abstract and page 49, paragraph 1).

As noted above, Haner disclose a personal inventory (i.e., questions/response) directed to the determination of the attitude and personality of the prospective insured (Haner; page 49, paragraphs 5-7 and page 50, paragraphs 1-3), and Haner further discloses well known conventional classification factors including age and marital status (Haner; Abstract and page 49, paragraph 1), Haner fails to disclose the distillation of four or more representative questions from a broad survey of 200 or more individuals. Haner further fails to disclose derivation of four or more questions derived from 50 or more questions administered in the survey.

However, Lajunen discloses providing a questionnaire, wherein a person gives self-assessed skill estimates and safety motives and are asked to assess their own abilities and personality (Lajunen; page 308, paragraphs 1-2 and 5, page 309, paragraphs 1-2).

Lajunen further discloses a technique wherein said set of four or more questions have been devised by a survey method comprising the steps of: e. providing said survey to a sample population of 200 or more people (Lajunen; page 307, paragraph 2); Lajunen further discloses back ground variables (i.e., conventional factors) including 3. years of driving experience; 4. number of miles driven per year (Lajunen; page 309, paragraph 8 and page 314, paragraph 1-2);

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Regarding step d. composing a survey of 50 or more questions that tap into personality traits that may affect accident involvement and reporting; Lajunen discloses multiple surveys and tested personality traits and specifically mentions deriving questions from multiple studies including 13/5 choice items from *The Driver Skill Inventory*, 20 items from Hatakka et al., and 9 additional measures from Naatanen-Summala (Lajunen; page 308, paragraphs 10-11 and page 309, paragraph 1).

As to step g., Lajunen's correlation method reads on step g. analyzing said information to select said set of four or more questions from among said survey questions such that the survey responses by said sample population to said set of four or more questions significantly increase the multiple correlation between said survey responses and automobile insurance claims reported by said sample population when said conventional classification information is controlled for, said increase in the multiple correlation being significant to at least the 5% level (Lajunen; page 309 paragraphs 2-8, page 310 1-4 and Tables 1-4)

NOTE: *Lajunen employs data from self-reported accidents as opposed to insurance claims. Examiner considers self-reported accidents and insurance claims equivalent data sources with respect to the development of questions and responses to questions and driving tendencies. Both provide a source value for a number of accidents.

NOTE: Lajunen describes extensive analysis of the self-assessments directed to determining those motives and traits most contributory to the driving attributes of the surveyed individuals.

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At the time the invention was made, it would have been obvious to include the features of Lajunen within the method taught by Haner with the motivation of measuring skill and safety-motive dimensions in drivers self-assessment of the their driving abilities (Lajunen; Summary on page 307) and to properly predict insurance applicant accident susceptibility to accurately determine insurance premiums (Haner; page 49, paragraph 3).

Haner and Lajunen fail to disclose whether the classification is performed "automatically".

However, as is evidenced by DeTore, automatic risk classificaiton for a particular applicant based on data collected including informaiton which may have a bearing on insurability, wherein the classification is performed by an expert module without input from the underwriter (i.e., automatically) (DeTore; col. 5, lines 19-68, col. 10, lines 43-54, col. 14, lines 50 to col. 15, lines 18), is well known in the insurance underwriting art.

At the time the invention was made, it would have been obvious to one or ordinary skill in the art to combine the features of DeTore within the method taught collectively by Haner and Lajunen with the motivation of providing an automated system for assessing risk without the aid or intervention of underwriters, thus improving efficiency, quality, and consistency of decisions (DeTore; col. 6, lines 3-10).

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Claim 37 has been amended with respect to step (e) to further define the "people" to whom the recited survey is provided to further specify "...wherein the age of said people is in the range of 16-77 years old..."

As per this element, each of Haner and Lajunen disclose grouping individuals/survey respondents by various criteria including age. More specifically, Haner discloses grouping categories for survey administration into groups defined by various criteria including age (Haner; page 50, paragraphs 5-10 and Figs. 1-6 *see age based subdivisions and ranges). Lajunen provides a target age group including data on average age and gender of the participants/target individuals (Lajunen; page 308, paragraphs 7-11 and pages 313 and 314 *see population characteristics including mean and average ages and gender statistics).

While neither Haner nor Lajunen report/disclose an age range of "16-77", in the above applied teachings Haner reports groupings of individuals in ranges of below 65 and above 65 as well as characterizations of underage drivers and adult drivers. Lajunen further characterizes the sample population with statistics of a median age and gender-based statistics, among other criteria.

While neither reference explicitly provides the claimed age range, Examiner submits that the teachings of Haner and Lajunen evidence that it is well known to define a target age range as well as report additional statistics characterizing the target/sample population on the basis of age (e.g. average age, gender, median, mean etc.). Examiner considers the particular designation of an age range of 16-77 as claimed by Applicant to constitute an obvious design experimental

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design choice made by the survey designer dependent on the intended target population.

Examiner further provides that it would have been obvious to one of ordinary skill in the art to apply the techniques of Haner and Lajunen to a different target population and that the methodologies would serve to yield the predictable results of defining the population of the chosen age range and age characteristics. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398. 415 (2007).

Similarly, regarding the correlations and the levels of confidence features of claim 37, in accordance with the BPAI decision of 29 September 2010, Examiner notes that claim 37 merely recites correlations and the Specification as originally filed fails to explain what the noted correlations are and in what respect they distinguish from known practices of correlating data to arrive at a statistical desired confidence level. Accordingly the noted recitation are directed to familiar elements which and methodologies and a yield of predictable results. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398. 415 (2007).

As per claim 38, Lajunen discloses a method wherein said set of four or more questions comprises not more than ten questions (Lajunen; page 308, paragraphs 10-11 and page 309, paragraph 1).

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As per claim 39, Lajunen discloses a method wherein said set of four or more questions comprises not more than four questions (Lajunen; page 308, paragraphs 10-11 and page 309, paragraph 1).

NOTE: Regarding currently amended claims 38 and 39, Lajunen provides instances of multiple surveys employing 4-20 survey items (i.e., questions) (see claim 37 analysis). Examiner submits that the specific number of questions constitutes a design choice as evidenced by the different statistical measures provided in the Lajunen disclosure.

Claims 40-43 have been cancelled.

As per claim 44, Haner discloses a method wherein said method further comprises the steps of:

- b. obtaining a set of responses to said second set of questions (Haner; page 50, paragraphs 4-5);
- and c. in said step of classifying said prospective insured into a risk class based at least in part on said set of responses to said four or more questions, also basing said classification of said prospective insured at least in part on said set of responses to said second questions (Haner; page 49, paragraph 3, page 50, paragraphs 5-7, and page 51, table 1).

While Haner discloses known background elements (i.e., second questions) including age and marital status, Haner fails to indicate background elements (i.e., second questions) including mileage and driving experience.

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However, Lajunen discloses step a. providing to said prospective insured a second set of questions related to one or more of said prospective insured age, gender, annual mileage or driving experience (Lajunen; page 309, paragraph 8 and page 310, paragraphs 1-2).

Haner and Lajunen fail to disclose whether the classification is performed "automatically".

However, as is evidenced by DeTore, automatic risk classification for a particular applicant based on data collected including information which may have a bearing on insurability, wherein the classification is performed by an expert module without input from the underwriter (i.e., automatically) (DeTore; col. 5, lines 19-68, col. 10, lines 43-54, col. 14, lines 50 to col. 15, lines 18), is well known in the insurance underwriting art.

As per claim 45, Lajunen discloses a method wherein said personality traits comprise: a. impulsivity; b. locus of control; c. self-esteem; d. invulnerability; e. hostility; f. anger; g. trust; h. social desirability; and i. thoroughness in decision making (Lajunen; page 309, paragraphs 2-8 and page 310, paragraphs 1-2, and TABLE 1) NOTE: While Lajunen specifically discloses a number of the personality traits claimed by Applicant, Examiner considers the specific questions and personality traits measure to constitute non-functional data elements as the specific questions or traits measured does not functionally contribute to the determination of relevant personality traits and categorization of individuals into risk classifications).

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As per claim 46, Lajunen discloses a method wherein at least one of said survey questions is a personal statement with which a person is asked to indicated agreement or disagreement (Lajunen; page 310, paragraphs 1-2).

Claims 47 in cancelled.

Newly added claims 48-51 further define specific age characteristics of the surveyed population including a "mean age of 36.7 years" (claim 48), a population that have "miles driven per years in the range of 0-75,000 with a mean of about 15,700 miles" (claim 49), "claim reporting of .43 or more over a six year period" (claim 50), and "not less than 44% identifiable males" (claim 51).

With respect to these elements, as noted above with respect to claim 37, each of Haner and Lajunen disclose grouping individuals/survey respondents by various criteria including age. More specifically, Haner disclose grouping categories for survey administration into groups defined by various criteria including age (Haner; page 50, paragraphs 5-10 and Figs. 1-6 *see age based subdivisions and ranges). Lajunen provides a target age group incljding data on average age and gender of the participants/target individuals (Lajunen; page 308, paragraphs 7-11 and pages 313 and 314 *see population characteristics including mean and average ages and gender statistics).

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While neither Haner nor Lajunen report/disclose an age statistics of claims 48-51, in the above applied teachings Haner reports groupings of individuals in ranges of below 65 and above 65 as well as characterizations of underage drivers and adult drivers. Lajunen further characterizes the sample population with statistics of a median age and gender-based statistics, among other criteria.

While neither reference explicitly provides the claimed age characteristics Examiner submits that the teachings of Haner and Lajunen evidence that it is well known to define a target age range as well as report additional statistics characterizing the target/sample population on the basis of age (e.g. average age, gender, median, mean etc.). Examiner considers the particular designation of an age range of 16-77, average age of 36.7, etc., as claimed by Applicant to constitute an obvious experimental design choices made by the survey designer dependent on the intended target population. Examiner further provides that it would have been obvious to one of ordinary skill in the art to apply the techniques of Haner and Lajunen to a different target population and that the methodologies would serve to yield the predictable results of defining the population of the chosen age range and age characteristics. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398. 415 (2007).

Regarding claims 38-39 and 44-46, and newly added claims 48-51, the obviousness and motivation to combine as discussed with regard to claim 37 above are applicable to claims 38-39 and 44-46 and 48-51 and are herein incorporated by reference.

Response to Remarks/Amendment

Applicant's remarks filed 12 November 2010 have been fully considered but they are not persuasive. Further, the noted remarks are deemed to have been addressed in the preceding sections of the instant Office Action (*see discussion of age characteristics with respect to claims 37 and 48-51) and in the BPAI decision mailed 29 September 2010.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. David Rines whose telephone number is (571)272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. David Rines/
Primary Examiner, Art Unit 3623